
TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Final Rule

LSA Document #14-254(F)

DIGEST

Adds [329 IAC 1-2](#) concerning requests for restrictive covenant modifications and associated cost recovery measures for remediation projects described in [IC 13-23](#), [IC 13-24](#), [IC 13-25-4](#), and [IC 13-25-5](#). Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: July 16, 2014, Indiana Register (DIN: [20140716-IR-329140254FNA](#)).
Second Notice of Comment Period: August 12, 2015, Indiana Register (DIN: [20150812-IR-329140254SNA](#)).
Notice of First Hearing: August 12, 2015, Indiana Register (DIN: [20150812-IR-329140254PHA](#)).
Date of First Hearing: October 14, 2015.
Proposed Rule: December 23, 2015, Indiana Register (DIN: [20151223-IR-329140254PRA](#)).
Notice of Second Hearing: December 23, 2015, Indiana Register (DIN: [20151223-IR-329140254PHA](#)).
Date of Second Hearing: February 10, 2016.

[329 IAC 1-2](#)

SECTION 1. [329 IAC 1-2](#) IS ADDED TO READ AS FOLLOWS:

Rule 2. Restrictive Covenants

[329 IAC 1-2-1](#) Applicability

Authority: [IC 13-14-2-9](#); [IC 13-25-4-1](#); [IC 13-25-4-2](#)

Affected: [IC 13-11-2-193.5](#); [IC 13-14-2-9](#); [IC 13-23](#); [IC 13-24](#); [IC 13-25-4](#); [IC 13-25-5](#)

Sec. 1. This rule applies to the owner of a property:

(1) that is subject to a restrictive covenant, as defined in [IC 13-11-2-193.5](#), created in connection with a remediation project conducted under:

- (A) [IC 13-23](#);
- (B) [IC 13-24](#);
- (C) [IC 13-25-4](#); or
- (D) [IC 13-25-5](#); and

(2) for which the owner seeks approval from the department to:

- (A) modify a restriction or obligation; or
- (B) terminate a restrictive covenant.

(Solid Waste Management Division; [329 IAC 1-2-1](#); filed Apr 28, 2016, 3:41 p.m.: [20160525-IR-329140254FRA](#))

[329 IAC 1-2-2](#) Definitions

Authority: [IC 13-14-2-9](#); [IC 13-25-4-1](#); [IC 13-25-4-2](#)

Affected: [IC 13-11-2](#); [IC 13-14-2-9](#)

Sec. 2. (a) In addition to the definitions in [IC 13-11-2](#), the definitions in this section apply throughout this rule.

(b) "Applicant" means a person who applies for a modification or termination of a restrictive covenant.

(c) "Modification" means any amendment to a restrictive covenant subject to this rule that results in a remaining restriction or obligation to the owner of the property.

(d) "Owner" means the owner of real property subject to a restrictive covenant.

(e) "Termination" means the expiration of the restrictive covenant and cessation of all terms of the restrictive covenant.

(Solid Waste Management Division; [329 IAC 1-2-2](#); filed Apr 28, 2016, 3:41 p.m.: [20160525-IR-329140254FRA](#))

[329 IAC 1-2-3](#) General provisions

Authority: [IC 13-14-2-9](#); [IC 13-25-4-1](#); [IC 13-25-4-2](#)

Affected: [IC 13-14-2-9](#)

Sec. 3. An owner may request a modification or termination in accordance with [IC 13-14-2-9](#) if:

(1) there is a change in conditions or advancement in science or technology that would permit a modification; and

(2) the modification of the conditions and restrictions imposed by the restrictive covenant would not increase the potential hazards to human health or the environment.

(Solid Waste Management Division; [329 IAC 1-2-3](#); filed Apr 28, 2016, 3:41 p.m.: [20160525-IR-329140254FRA](#))

[329 IAC 1-2-4](#) Modification or termination application

Authority: [IC 13-14-2-9](#); [IC 13-25-4-1](#); [IC 13-25-4-2](#)

Affected: [IC 13-14-2-9](#)

Sec. 4. (a) An application for modification or termination of a restrictive covenant must be submitted to the commissioner on forms provided by the department. To be considered complete, the following information must be included:

(1) A copy of the proposed modification or termination.

(2) An explanation of the change in condition or advancement of science and technology that permits the modification or termination.

(3) Third party contact information based on:

(A) required approvals from the original restrictive covenant; or

(B) approval required by a court action.

(4) A copy of written approval for the requested modification or termination from:

(A) the property owner, if different than the applicant; and

(B) any third party as required by:

(i) the original restrictive covenant; or

(ii) a court action.

(b) In accordance with [IC 13-14-2-9\(c\)](#), the commissioner may request additional information to make a determination on the modification or termination request.

(Solid Waste Management Division; [329 IAC 1-2-4](#); filed Apr 28, 2016, 3:41 p.m.: [20160525-IR-329140254FRA](#))

[329 IAC 1-2-5](#) Action on an application

Authority: [IC 13-14-2-9](#); [IC 13-25-4-1](#); [IC 13-25-4-2](#)

Affected: [IC 13-14-2-9](#)

Sec. 5. (a) The commissioner shall approve a request for modification or termination of a restrictive covenant if the commissioner determines that the modification or termination meets the requirements of:

(1) [IC 13-14-2-9](#); and

(2) this rule.

(b) The commissioner may authorize the filing of a supplemental recording to reflect an approved modification or termination of a restrictive covenant pursuant to [IC 13-14-2-9\(c\)](#). A supplemental recording must comply with section 6 of this rule.

(Solid Waste Management Division; [329 IAC 1-2-5](#); filed Apr 28, 2016, 3:41 p.m.: [20160525-IR-329140254FRA](#))

[329 IAC 1-2-6](#) Submittal of supplemental recording

Authority: [IC 13-14-2-9](#); [IC 13-25-4-1](#); [IC 13-25-4-2](#)

Affected: [IC 13-14-2-9](#)

Sec. 6. (a) All restrictive covenant modifications and terminations must be recorded in the same manner and with the same county recorder as the original restrictive covenant.

(b) The owner shall provide a copy of the supplemental recording to the department within thirty (30) days of the recordation.

(Solid Waste Management Division; [329 IAC 1-2-6](#); filed Apr 28, 2016, 3:41 p.m.: [20160525-IR-329140254FRA](#))

[329 IAC 1-2-7](#) Cost recovery

Authority: [IC 13-14-2-9](#); [IC 13-25-4-1](#); [IC 13-25-4-2](#)

Affected: [IC 13-14-2-6](#); [IC 13-14-2-9](#)

Sec. 7. (a) In accordance with [IC 13-14-2-9](#)(d), the applicant shall reimburse the department for the administrative and personnel expenses incurred by the department in evaluating a proposed modification or termination of a restrictive covenant under this rule.

(b) Administrative expenses must include any expense to the department related to the review of the modification or termination request that would not have otherwise been incurred by the department.

(c) The department shall charge personnel expenses at seventy-five (75) dollars per hour of time a department employee expends in evaluating the proposed modification or termination request.

(d) The department shall send an invoice to the owner for personnel and administrative costs to the department.

(e) Failure to reimburse the department for expenses incurred by the department in evaluating a proposed modification or termination of a restrictive covenant under this rule may result in:

(1) denial of the modification or termination; or

(2) legal action under [IC 13-14-2-6](#).

(Solid Waste Management Division; [329 IAC 1-2-7](#); filed Apr 28, 2016, 3:41 p.m.: [20160525-IR-329140254FRA](#))

LSA Document #14-254(F)

Proposed Rule: [20151223-IR-329140254PRA](#)

Hearing Held: February 10, 2016

Approved by Attorney General: April 13, 2016

Approved by Governor: April 28, 2016

Filed with Publisher: April 28, 2016, 3:41 p.m.

Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Patricia Daniel, IDEM Small Business Regulatory Coordinator, IGCN 1316, 100 North Senate Avenue, Indianapolis, IN 46204-2251, (317) 234-6562 or (800) 988-7901, ctap@idem.in.gov

Small Business Assistance Program Ombudsman: Steven N. Howell, IDEM Small Business Assistance Program Ombudsman, IGCN 1301, 100 North Senate Avenue, Indianapolis, IN 46204-2251, (317) 232-8587 or (800) 451-6027, snhowell@idem.in.gov

Posted: 05/25/2016 by Legislative Services Agency
An [html](#) version of this document.